

This letter discusses Motor Fuel Tax related to motor vehicles brought into the State by a manufacturer. See 35 ILCS 505/1 et seq. (This is a GIL).

September 23, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 19, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We hereby request that the Illinois Department of Revenue issue a Letter Ruling on the Illinois motor fuels tax-exempt status of motor fuel imported into the State of Illinois in the tanks of motor vehicles transported by common carrier and/or rail, regardless of whether similar taxes were paid to other states.

The following discussion explains the facts and our conclusion that Illinois motor fuels tax should not be imposed on fuel in the tanks of motor vehicles transported by common carrier and/or rail, regardless of whether similar taxes were paid to other states, based upon:

1. The exemptions as promulgated by Illinois Revised Statutes that state that 'Exemptions are also allowed for sales to persons *taking delivery outside the state*' (35 ILCS 505/6)(3), and,
2. Illinois' definition of distributor as 'a person who (i) produces, refines, blends, compounds or manufactures motor fuel in this State, or (ii) transports motor fuel into this State, or (iii) who is engaged in this State in the distribution of motor fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active bulk storage capacity of not less than 30,000 gallons for gasoline as defined in Section 5(A) of the Law' (86 Ill. Adm. Code 500.100).

Subject

The application of Illinois motor fuels tax on motor fuel imported into the State of Illinois in the tanks of motor vehicles transported by common carrier and/or rail.

Facts

The taxpayer is a motor vehicle manufacturer headquartered in STATE. Motor vehicles produced at the taxpayer's manufacturing facilities are exported to independently owned dealers throughout the United States, and outside of the United States, via common carrier and/or rail. A specific amount of motor fuel is placed into the tanks of all motor vehicles at the taxpayer's manufacturing facilities to accommodate the loading and unloading of the motor vehicles in transit. In some cases, motor fuel tax is paid to the state in which the manufacturing facility is located. In other cases, motor fuel tax is not paid to the state in which the manufacturing facility is located because the fuel is subsequently exported from the state or because the state does not impose tax on such fuel.

Our Conclusion

We believe that Illinois motor fuels tax should not be imposed on motor fuel imported into the State of Illinois in the tanks of motor vehicles transported by common carrier and/or rail, regardless of whether similar taxes were paid to other states.

Basis for Our Conclusion

Illinois statutes define 'Persons and Motor Fuels Subject to Tax' as:

'Each *distributor* who sells any motor fuel suitable for operating motor vehicles and watercraft must collect a tax from the purchaser at the time of the sale' (35 ILCS 505/2, 35 ILCS 505/6).

'Exemptions are also allowed for sales (1) to another distributor, (2) to the federal government or its instrumentalities, (3) *to persons taking delivery outside the state*, (4) to a municipality owning and operating a public transportation system, and (5) to privately owned public utilities owning and operating two-axle vehicles designed and used for transporting more than seven passengers as common carriers, which vehicles are not used for specialized purposes, operate in a single or contiguous communities and which are subject to regulations of the Illinois Commerce Commission. The exemptions under (2), (4), and (5), above, are allowed when the motor fuel is delivered from a dispensing facility that has withdrawal facilities capable of dispensing motor fuel into the fuel supply tanks of motor vehicles. All of the above exemptions are allowed when the motor fuel is delivered from other facilities' (35 ILCS 505/6).

Illinois defines *distributor* as:

'a person who (i) produces, refines, blends, compounds or manufactures motor fuel in this State, or (ii) transports motor fuel into this State, or (iii) who is engaged in this State in the distribution of motor fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active bulk storage capacity of not less than 30,000 gallons for gasoline as defined in Section 5(A) of the Law' (86 Ill. Adm. Code 500.100). (Excerpted, emphasis added)

It is unclear, based upon the guidelines established by Illinois' statutes, whether motor fuel imported into the State of Illinois in the tanks of motor vehicles transported by common carrier and/or rail is taxable for Illinois motor fuels tax purposes.

The taxpayer *takes delivery of the fuel outside the state*. Therefore, it appears that the fuel purchased by the taxpayer outside of, and subsequently brought into, the State qualifies for exemption under 35 ILCS 505/6(3). Furthermore, the taxpayer, as part of its daily operations, transports *motor vehicles (not fuel)* into the State of Illinois. Therefore, the taxpayer does not appear to qualify as a distributor for Illinois motor fuels tax purposes. We believe that, based upon the exemption promulgated by Illinois Revised Statutes Sec. 505/6(3) and Illinois' definition of 'distributor,' the fuel is exempt for Illinois motor fuel tax purposes and that Illinois motor fuels tax should not be imposed on the motor fuel imported by the taxpayer into the State of Illinois in the tanks of motor vehicles transported by common carrier and/or rail, regardless of whether similar taxes were paid to other states.

Based upon the discussion above, we respectfully request the Department to issue a Letter Ruling stating that Illinois motor fuels tax should not be imposed on motor fuel imported into the State of Illinois in the tanks of motor vehicles transported by common carrier and/or rail, regardless of whether similar taxes were paid to other states.

If you have any questions with respect to this matter, please call me.

The Motor Fuel Tax Law imposes a tax upon the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of the State. 35 ILCS 505/2. The current Motor Fuel Tax rate is 19 cents per gallon. An additional 2 ½ cents per gallon is due for motor vehicles which use diesel fuel.

The definition of "distributor" in Section 1.2 of the Motor Fuel Tax Law, 35 ILCS 505/1.2, provides that a distributor is "a person who either (i) produces, refines, blends, compounds or manufactures motor fuel in this State, or (ii) transports motor fuel into this State, or (iii) engages in the distribution of motor fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he or she has active bulk storage capacity of not less than 30,000 gallons for gasoline as defined in item (A) of Section 5 of this Law." It also provides that "a person operating a motor vehicle into the State, may transport motor fuel in the ordinary fuel tank attached to the motor vehicle for the operation of the motor vehicle without being considered a distributor."

The exception provided for persons operating a motor vehicle into the State with motor fuel in the ordinary fuel tank attached to the motor vehicle for the operation of the motor vehicle is reserved for persons who actually drive motor vehicles through the State. Your client is not driving the motor vehicles into Illinois, but is instead transporting fueled vehicles into Illinois via common carrier. Persons that operate in this manner meet the definition of a distributor and should get registered.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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